



House of Representatives

General Assembly

File No. 156

January Session, 2007

House Bill No. 6390

House of Representatives, March 27, 2007

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING TREATMENT OPTIONS FOR DEFENDANTS FOUND NOT COMPETENT TO STAND TRIAL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-56d of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) A defendant shall not be tried, convicted or sentenced while the
4 defendant is not competent. For the purposes of this section, a
5 defendant is not competent if the defendant is unable to understand
6 the proceedings against him or her or to assist in his or her own
7 defense.

8 (b) A defendant is presumed to be competent. The burden of
9 proving that the defendant is not competent by a preponderance of the
10 evidence and the burden of going forward with the evidence are on the
11 party raising the issue. The burden of going forward with the evidence
12 shall be on the state if the court raises the issue. The court may call its
13 own witnesses and conduct its own inquiry.

14 (c) If, at any time during a criminal proceeding, it appears that the
15 defendant is not competent, counsel for the defendant or for the state,
16 or the court, on its own motion, may request an examination to
17 determine the defendant's competency.

18 (d) If the court finds that the request for an examination is justified
19 and that, in accordance with procedures established by the judges of
20 the Superior Court, there is probable cause to believe that the
21 defendant has committed the crime for which the defendant is
22 charged, the court shall order an examination of the defendant as to his
23 or her competency. The court may (1) appoint one or more physicians
24 specializing in psychiatry to examine the defendant, or (2) order the
25 Commissioner of Mental Health and Addiction Services to conduct the
26 examination either (A) by a clinical team consisting of a physician
27 specializing in psychiatry, a clinical psychologist and one of the
28 following: A clinical social worker licensed pursuant to chapter 383b or
29 a psychiatric nurse clinical specialist holding a master's degree in
30 nursing, or (B) by one or more physicians specializing in psychiatry,
31 except that no employee of the Department of Mental Health and
32 Addiction Services who has served as a member of a clinical team in
33 the course of such employment for at least five years prior to October
34 1, 1995, shall be precluded from being appointed as a member of a
35 clinical team. If the Commissioner of Mental Health and Addiction
36 Services is ordered to conduct the examination, the commissioner shall
37 select the members of the clinical team or the physician or physicians.
38 If the examiners determine that the defendant is not competent, the
39 examiners shall then determine whether there is a substantial
40 probability that the defendant, if provided with a course of treatment,
41 will regain competency within the maximum period of any placement
42 order under this section. If the examiners determine that there is a
43 substantial probability that the defendant, if provided with a course of
44 treatment, will regain competency within the maximum period of any
45 placement order under this section, the examiners shall then determine
46 whether the defendant appears to be eligible for civil commitment,
47 with monitoring by the Court Support Services Division, pursuant to
48 subdivision (2) of subsection (h) of this section. If the examiners

49 determine that there is not a substantial probability that the defendant,
50 if provided with a course of treatment, will regain competency within
51 the maximum period of any placement order under this section, the
52 examiners shall then determine whether the defendant appears to be
53 eligible for civil commitment to a hospital for psychiatric disabilities
54 pursuant to subsection (m) of this section and make a recommendation
55 to the court regarding the appropriateness of such civil commitment.

56 The court may authorize a physician specializing in psychiatry, a
57 clinical psychologist, a clinical social worker licensed pursuant to
58 chapter 383b or a psychiatric nurse clinical specialist holding a master's
59 degree in nursing selected by the defendant to observe the
60 examination. Counsel for the defendant may observe the examination.
61 The examination shall be completed within fifteen days from the date
62 it was ordered and the examiners shall prepare and sign, without
63 notarization, a written report and file such report with the court within
64 twenty-one business days of the date of the order. On receipt of the
65 written report, the clerk of the court shall cause copies to be delivered
66 immediately to the state's attorney and to counsel for the defendant.

67 (e) The court shall hold a hearing as to the competency of the
68 defendant no later than ten days after the court receives the written
69 report. Any evidence regarding the defendant's competency, including
70 the written report, may be introduced at the hearing by either the
71 defendant or the state. If the written report is introduced, at least one
72 of the examiners shall be present to testify as to the determinations in
73 the report, unless the examiner's presence is waived by the defendant
74 and the state. Any member of the clinical team shall be considered
75 competent to testify as to the team's determinations. A defendant and
76 the defendant's counsel may waive the court hearing only if the
77 examiners, in the written report, determine without qualification that
78 the defendant is competent.

79 (f) If the court, after the hearing, finds that the defendant is
80 competent, the court shall continue with the criminal proceedings. If
81 the court finds that the defendant is not competent, the court shall also
82 find whether there is a substantial probability that the defendant, if

83 provided with a course of treatment, will regain competency within
84 the maximum period of any placement order permitted under this
85 section.

86 (g) If, at the hearing, the court finds that there is not a substantial
87 probability that the defendant, if provided with a course of treatment,
88 will regain competency within the period of any placement order
89 under this section, the court shall follow the procedure set forth in
90 subsection (m) of this section.

91 (h) (1) If, at the hearing, the court finds that there is a substantial
92 probability that the defendant, if provided with a course of treatment,
93 will regain competency within the period of any placement order
94 under this section, the court shall either (A) order placement of the
95 defendant for treatment for the purpose of rendering the defendant
96 competent, or (B) order placement of the defendant at a treatment
97 facility pending civil commitment proceedings pursuant to
98 subdivision (2) of this subsection.

99 (2) (A) Except as provided in subparagraph (B) of this subdivision, if
100 the court makes a finding pursuant to subdivision (1) of this subsection
101 and does not order placement pursuant to subparagraph (A) of said
102 subdivision, the court shall, on its own motion or on motion of the
103 state or the defendant, order placement of the defendant in the custody
104 of the Commissioner of Mental Health and Addiction Services at a
105 treatment facility pending civil commitment proceedings. The
106 treatment facility shall be determined by the Commissioner of Mental
107 Health and Addiction Services. Such order shall: (i) Include an
108 authorization for the Commissioner of Mental Health and Addiction
109 Services to apply for civil commitment of such defendant pursuant to
110 sections 17a-495 to 17a-528, inclusive; (ii) permit the defendant to agree
111 to request voluntarily to be admitted under section 17a-506 and
112 participate voluntarily in a treatment plan prepared by the
113 Commissioner of Mental Health and Addiction Services, and require
114 that the defendant comply with such treatment plan; and (iii) provide
115 that if the application for civil commitment is denied or not pursued

116 by the Commissioner of Mental Health and Addiction Services, or if
117 the defendant is unwilling or unable to comply with a treatment plan
118 despite reasonable efforts of the treatment facility to encourage the
119 defendant's compliance, the person in charge of the treatment facility,
120 or such person's designee, shall submit a written progress report to the
121 court and the defendant shall be returned to the court for a hearing
122 pursuant to subsection (k) of this section. Such written progress report
123 shall include the status of any civil commitment proceedings
124 concerning the defendant, the defendant's compliance with the
125 treatment plan, an opinion regarding the defendant's current
126 competency to stand trial, the clinical findings of the person
127 submitting the report and the facts upon which the findings are based,
128 and any other information concerning the defendant requested by the
129 court, including, but not limited to, the method of treatment or the
130 type, dosage and effect of any medication the defendant is receiving.
131 The Court Support Services Division shall monitor the defendant's
132 compliance with any applicable provisions of such order. The period
133 of placement and monitoring under such order shall not exceed the
134 period of the maximum sentence which the defendant could receive on
135 conviction of the charges against such defendant, or eighteen months,
136 whichever is less. If the defendant has complied with such treatment
137 plan and any applicable provisions of such order, at the end of the
138 period of placement and monitoring, the court shall approve the entry
139 of a nolle prosequi to the charges against the defendant or shall
140 dismiss such charges.

141 (B) This subdivision shall not apply: (i) To any person charged with
142 a class A felony, a class B felony, except a violation of section 53a-122
143 that does not involve the use, attempted use or threatened use of
144 physical force against another person, or a violation of section 14-227a,
145 subdivision (2) of subsection (a) of section 53-21 or section 53a-56b,
146 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b; (ii) to any
147 person charged with a crime or motor vehicle violation who, as a result
148 of the commission of such crime or motor vehicle violation, causes the
149 death of another person; or (iii) unless good cause is shown, to any
150 person charged with a class C felony.

151 (i) The placement for treatment for the purpose of rendering the
152 defendant competent shall comply with the following conditions: (1)
153 The period of placement under the order or combination of orders
154 shall not exceed the period of the maximum sentence which the
155 defendant could receive on conviction of the charges against the
156 defendant or eighteen months, whichever is less; (2) the placement
157 shall be either in the custody of the Commissioner of Mental Health
158 and Addiction Services, the Commissioner of Children and Families or
159 the Commissioner of Mental Retardation or, if the defendant or the
160 appropriate commissioner agrees to provide payment, in the custody
161 of any appropriate mental health facility or treatment program which
162 agrees to provide treatment to the defendant and to adhere to the
163 requirements of this section; and (3) the court shall order the
164 placement, on either an inpatient or an outpatient basis, which the
165 court finds is the least restrictive placement appropriate and available
166 to restore competency. If outpatient treatment is the least restrictive
167 placement for a defendant who has not yet been released from a
168 correctional facility, the court shall consider whether the availability of
169 such treatment is a sufficient basis on which to release the defendant
170 on a promise to appear, conditions of release, cash bail or bond. If the
171 court determines that the defendant may not be so released, the court
172 shall order treatment of the defendant on an inpatient basis at a mental
173 health facility or mental retardation facility.

174 (j) The person in charge of the treatment facility, or such person's
175 designee, shall submit a written progress report to the court (1) at least
176 seven days prior to the date of any hearing on the issue of the
177 defendant's competency; (2) whenever he or she believes that the
178 defendant has attained competency; (3) whenever he or she believes
179 that there is not a substantial probability that the defendant will attain
180 competency within the period covered by the placement order; or (4)
181 whenever, within the first one hundred twenty days of the period
182 covered by the placement order, he or she believes that the defendant
183 would be eligible for civil commitment pursuant to subdivision (2) of
184 subsection (h) of this section. The progress report shall contain: (A) The
185 clinical findings of the person submitting the report and the facts on

186 which the findings are based; (B) the opinion of the person submitting
187 the report as to whether the defendant has attained competency or as
188 to whether the defendant is making progress, under treatment, toward
189 attaining competency within the period covered by the placement
190 order; [and] (C) the opinion of the person submitting the report as to
191 whether the defendant appears to be eligible for civil commitment to a
192 hospital for psychiatric disabilities pursuant to subsection (m) of this
193 section and the appropriateness of such civil commitment, if there is
194 not a substantial probability that the defendant will attain competency
195 within the period covered by the placement order; and (D) any other
196 information concerning the defendant requested by the court,
197 including, but not limited to, the method of treatment or the type,
198 dosage and effect of any medication the defendant is receiving.

199 (k) (1) When any placement order for treatment is rendered or
200 continued, the court shall set a date for a hearing, to be held within
201 ninety days, for reconsideration of the issue of the defendant's
202 competency. Whenever the court (A) receives a report pursuant to
203 subsection (j) of this section which indicates that (i) the defendant has
204 attained competency, (ii) the defendant will not attain competency
205 within the remainder of the period covered by the placement order,
206 (iii) the defendant will not attain competency within the remainder of
207 the period covered by the placement order absent administration of
208 psychiatric medication for which the defendant is unwilling or unable
209 to provide consent, or (iv) the defendant would be eligible for civil
210 commitment pursuant to subdivision (2) of subsection (h) of this
211 section, or (B) receives a report pursuant to subparagraph (A)(iii) of
212 subdivision (2) of subsection (h) of this section which indicates that (i)
213 the application for civil commitment of the defendant has been denied
214 or has not been pursued by the Commissioner of Mental Health and
215 Addiction Services, or (ii) the defendant is unwilling or unable to
216 comply with a treatment plan despite reasonable efforts of the
217 treatment facility to encourage the defendant's compliance, the court
218 shall set the matter for a hearing no later than ten days after the report
219 is received. The hearing may be waived by the defendant only if the
220 report indicates that the defendant is competent. The court shall

determine whether the defendant is competent or is making progress toward attainment of competency within the period covered by the placement order. If the court finds that the defendant is competent, the defendant shall be returned to the custody of the Commissioner of Correction or released, if the defendant has met the conditions for release, and the court shall continue with the criminal proceedings. If the court finds that the defendant is still not competent but that the defendant is making progress toward attaining competency, the court may continue or modify the placement order. If the court finds that the defendant is still not competent and will not attain competency within the remainder of the period covered by the placement order absent administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, the court shall proceed as provided in subdivisions (2) and (3) of this subsection. If the court finds that the defendant is eligible for civil commitment, the court may order placement of the defendant at a treatment facility pending civil commitment proceedings pursuant to subdivision (2) of subsection (h) of this section.

(2) If the court finds that the defendant will not attain competency within the remainder of the period covered by the placement order absent administration of psychiatric medication for which the defendant is unwilling or unable to provide consent, and after any hearing held pursuant to subdivision (3) of this subsection, the court may order the involuntary medication of the defendant if the court finds by clear and convincing evidence that: (A) To a reasonable degree of medical certainty, involuntary medication of the defendant will render the defendant competent to stand trial, (B) an adjudication of guilt or innocence cannot be had using less intrusive means, (C) the proposed treatment plan is narrowly tailored to minimize intrusion on the defendant's liberty and privacy interests, (D) the proposed drug regimen will not cause an unnecessary risk to the defendant's health, and (E) the seriousness of the alleged crime is such that the criminal law enforcement interest of the state in fairly and accurately determining the defendant's guilt or innocence overrides the defendant's interest in self-determination.

256 (3) If the court finds that the defendant is unwilling or unable to
257 provide consent for the administration of psychiatric medication, and
258 prior to deciding whether to order the involuntary medication of the
259 defendant under subdivision (2) of this subsection, the court shall
260 appoint a health care guardian who shall be a licensed health care
261 provider with specialized training in the treatment of persons with
262 psychiatric disabilities to represent the health care interests of the
263 defendant before the court. Notwithstanding the provisions of section
264 52-146e, such health care guardian shall have access to the psychiatric
265 records of the defendant. Such health care guardian shall file a report
266 with the court not later than thirty days after his or her appointment.
267 The report shall set forth such health care guardian's findings and
268 recommendations concerning the administration of psychiatric
269 medication to the defendant, including the risks and benefits of such
270 medication, the likelihood and seriousness of any adverse side effects
271 and the prognosis with and without such medication. The court shall
272 hold a hearing on the matter not later than ten days after receipt of
273 such health care guardian's report and shall, in deciding whether to
274 order the involuntary medication of the defendant, take into account
275 such health care guardian's opinion concerning the health care
276 interests of the defendant.

277 (4) The state shall hold harmless and indemnify any health care
278 guardian appointed by the court pursuant to subdivision (3) of this
279 subsection from financial loss and expense arising out of any claim,
280 demand, suit or judgment by reason of such health care guardian's
281 alleged negligence or alleged deprivation of any person's civil rights or
282 other act or omission resulting in damage or injury, provided the
283 health care guardian is found to have been acting in the discharge of
284 his or her duties pursuant to said subdivision and such act or omission
285 is found not to have been wanton, reckless or malicious. The
286 provisions of subsections (b), (c) and (d) of section 5-141d shall apply
287 to such health care guardian. The provisions of chapter 53 shall not
288 apply to a claim against such health care guardian.

289 (l) If a defendant who has been ordered placed for treatment on an

290 inpatient basis at a mental health facility or mental retardation facility
291 is released from such facility on a furlough or for work, therapy or any
292 other reason and fails to return to the facility in accordance with the
293 terms and conditions of the defendant's release, the person in charge of
294 the facility, or such person's designee, shall, within twenty-four hours
295 of the defendant's failure to return, report such failure to the
296 prosecuting authority for the court location which ordered the
297 placement of the defendant. Upon receipt of such a report, the
298 prosecuting authority shall, within available resources, make
299 reasonable efforts to notify any victim or victims of the crime for which
300 the defendant is charged of such defendant's failure to return to the
301 facility. No civil liability shall be incurred by the state or the
302 prosecuting authority for failure to notify any victim or victims in
303 accordance with this subsection. The failure of a defendant to return to
304 the facility in which the defendant has been placed may constitute
305 sufficient cause for the defendant's rearrest upon order by the court.

306 (m) If at any time the court determines that there is not a substantial
307 probability that the defendant will attain competency within the
308 period of treatment allowed by this section, or if at the end of such
309 period the court finds that the defendant is still not competent, the
310 court shall consider any recommendation made by the examiners
311 pursuant to subsection (d) of this section and any opinion submitted
312 by the treatment facility pursuant to subparagraph (C) of subsection (j)
313 of this section regarding eligibility for, and the appropriateness of, civil
314 commitment to a hospital for psychiatric disabilities and shall either
315 release the defendant from custody or order the defendant placed in
316 the custody of the Commissioner of Mental Health and Addiction
317 Services, the Commissioner of Children and Families or the
318 Commissioner of Mental Retardation. [The] If the court orders the
319 defendant placed in the custody of the Commissioner of Children and
320 Families or the Commissioner of Mental Retardation, the
321 commissioner given custody, or the commissioner's designee, shall
322 then apply for civil commitment [according to] in accordance with
323 sections 17a-75 to 17a-83, inclusive, or 17a-270 to 17a-282, inclusive, [,
324 and 17a-495 to 17a-528, inclusive.] If the court orders the defendant

325 placed in the custody of the Commissioner of Mental Health and
326 Addiction Services, the court may order the commissioner, or the
327 commissioner's designee, to apply for civil commitment in accordance
328 with sections 17a-495 to 17a-528, inclusive, or order the commissioner,
329 or the commissioner's designee, to provide services to the defendant in
330 a less restrictive setting. The court shall hear arguments as to whether
331 the defendant should be released or should be placed in the custody of
332 the Commissioner of Mental Health and Addiction Services, the
333 Commissioner of Children and Families or the Commissioner of
334 Mental Retardation. If the court orders the release of a defendant
335 charged with the commission of a crime that resulted in the death or
336 serious physical injury, as defined in section 53a-3, of another person,
337 or orders the placement of such defendant in the custody of the
338 Commissioner of Mental Health and Addiction Services, the court
339 may, on its own motion or on motion of the prosecuting authority,
340 order, as a condition of such release or placement, periodic
341 examinations of the defendant as to the defendant's competency. Such
342 an examination shall be conducted in accordance with subsection (d)
343 of this section. Upon receipt of the written report as provided in
344 subsection (d) of this section, the court shall, upon the request of either
345 party filed not later than thirty days after the court receives such
346 report, conduct a hearing as provided in subsection (e) of this section.
347 Such hearing shall be held not later than ninety days after the court
348 receives such report. If the court finds that the defendant has attained
349 competency, the defendant shall be returned to the custody of the
350 Commissioner of Correction or released, if the defendant has met the
351 conditions for release, and the court shall continue with the criminal
352 proceedings. Periodic examinations ordered by the court under this
353 subsection shall continue until the court finds that the defendant has
354 attained competency or until the time within which the defendant may
355 be prosecuted for the crime with which the defendant is charged, as
356 provided in section 54-193 or 54-193a, has expired, whichever occurs
357 first. The court shall dismiss, with or without prejudice, any charges
358 for which a nolle prosequi is not entered when the time within which
359 the defendant may be prosecuted for the crime with which the

360 defendant is charged, as provided in section 54-193 or 54-193a, has
361 expired. Notwithstanding the erasure provisions of section 54-142a,
362 police and court records and records of any state's attorney pertaining
363 to a charge which is nolleed or dismissed without prejudice while the
364 defendant is not competent shall not be erased until the time for the
365 prosecution of the defendant expires under section 54-193 or 54-193a.
366 A defendant who is not civilly committed as a result of an application
367 made by the Commissioner of Mental Health and Addiction Services,
368 the Commissioner of Children and Families or the Commissioner of
369 Mental Retardation pursuant to this section shall be released. A
370 defendant who is civilly committed pursuant to such an application
371 shall be treated in the same manner as any other civilly committed
372 person.

373 (n) The cost of the examination effected by the Commissioner of
374 Mental Health and Addiction Services and of testimony of persons
375 conducting the examination effected by the commissioner shall be paid
376 by the Department of Mental Health and Addiction Services. The cost
377 of the examination and testimony by physicians appointed by the
378 court shall be paid by the Judicial Department. If the defendant is
379 indigent, the fee of the person selected by the defendant to observe the
380 examination and to testify on the defendant's behalf shall be paid by
381 the Public Defender Services Commission. The expense of treating a
382 defendant placed in the custody of the Commissioner of Mental Health
383 and Addiction Services, the Commissioner of Children and Families or
384 the Commissioner of Mental Retardation pursuant to subdivision (2) of
385 subsection (h) of this section or subsection (i) of this section shall be
386 computed and paid for in the same manner as is provided for persons
387 committed by a probate court under the provisions of sections 17b-122,
388 17b-124 to 17b-132, inclusive, 17b-136 to 17b-138, inclusive, 17b-194 to
389 17b-197, inclusive, 17b-222 to 17b-250, inclusive, 17b-256, 17b-263, 17b-
390 340 to 17b-350, inclusive, 17b-689b and 17b-743 to 17b-747, inclusive.

391 (o) Until the hearing is held, the defendant, if not released on a
392 promise to appear, conditions of release, cash bail or bond, shall
393 remain in the custody of the Commissioner of Correction unless

394 hospitalized as provided in sections 17a-512 to 17a-517, inclusive.

395 (p) This section shall not be construed to require the Commissioner
396 of Mental Health and Addiction Services to place any violent
397 defendant in a mental institution which does not have the trained staff,
398 facilities and security to accommodate such a person.

399 (q) This section shall not prevent counsel for the defendant from
400 raising, prior to trial and while the defendant is not competent, any
401 issue susceptible of fair determination.

402 (r) Actual time spent in confinement on an inpatient basis pursuant
403 to this section shall be credited against any sentence imposed on the
404 defendant in the pending criminal case or in any other case arising out
405 of the same conduct in the same manner as time is credited for time
406 spent in a correctional facility awaiting trial.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	54-56d

JUD *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes technical and minor changes that have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 6390*****AN ACT CONCERNING TREATMENT OPTIONS FOR
DEFENDANTS FOUND NOT COMPETENT TO STAND TRIAL.*****SUMMARY:**

This bill authorizes courts to give the Department of Mental Health and Addiction Services (DMHAS) the option to treat some mentally ill criminal defendants in less restrictive settings than hospitals. Current law gives the department this option only after the Probate Court (1) civilly commits a criminal defendant to its custody and (2) determines that inpatient treatment is not necessary.

The bill applies to defendants charged with nonviolent crimes whose mental illnesses render them unable to stand trial and who are unlikely to become competent within the period in which they can lawfully be detained (18 months or the maximum prison sentence they could serve, whichever is shorter). This is the same population currently eligible to pursue civil commitment rather than be subject to further criminal proceedings.

The bill creates procedures for implementing this change. Other options in existing law remain unchanged, including procedures for pursuing civil commitment as an alternative to restoring their competency and resuming the criminal court proceedings.

EFFECTIVE DATE: October 1, 2007

CIVIL COMMITMENT RECOMMENDATIONS

By law, courts must appoint medical panels to conduct psychiatric examinations and make findings and recommendations when there is a question about a criminal defendant's mental competency (i.e.,

ability to understand the proceedings and aid in presenting his defense). Courts take these reports into consideration in deciding what further legal proceedings are appropriate. Among other things, the reports must contain findings about whether a defendant appears to meet the clinical standards for civil commitment. The bill requires the examiners also to give their opinion on whether civil commitment would be appropriate for defendants who will not regain competency within the period in which they can lawfully be detained. This opinion must be updated in all subsequent progress reports the panel or the hospital administrator files with the court. The bill requires courts to consider these opinions when determining the appropriateness of civil commitment.

COURT OPTIONS

When a panel's report indicates that an incompetent defendant is not likely to return to competency while being given restoration treatment but appears to be eligible for civil commitment, the criminal court currently has three options:

1. ordering that the defendant be treated to restore his competency, if this is likely to be successful within the statutory period that the defendant may be involuntarily subjected to this treatment;
2. releasing the defendant from custody; or
3. placing the defendant in the custody of DMHAS, DCF, or DMR and directing the agencies to file a Probate Court civil commitment application.

The bill gives the court the additional option of ordering the defendant into DMHAS custody for treatment in a less restricting setting. Less restrictive settings include outpatient hospital treatment and community-based treatment programs.

BACKGROUND

Civil Commitment in Lieu of Criminal Prosecution

In 2004, the legislature created a civil commitment option for incompetent people charged with certain non-violent crimes. It allows them to be treated for their underlying illness rather than for the purpose of restoring their competency to stand trial. Defendants who successfully complete treatment have the criminal charges dropped or nolle.

Defendants cannot participate if they have been charged with:

1. class A or B felonies, except first-degree larceny;
2. drunk driving or a crime or motor vehicle violation in which another person was killed;
3. sexual contact with a child under age 16;
4. manslaughter;
5. third-degree sexual assault; or
6. second-degree assault with a motor vehicle.

Those charged with class C felonies, other than the sex and drunk driving crimes listed above, can participate if they can show good cause for doing so.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 38 Nay 0 (03/14/2007)